

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E': NEW DELHI
(Through Video Conferencing)**

**BEFORE,
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
AND
SHRI A.N.MISSHRA, ACCOUNTANT MEMBER**

**ITA No.5714/Del/2017
(ASSESSMENT YEAR 2008-09)**

Asst. CIT Circle-52(1), New Delhi.	Vs.	M/s N. S. Software 12, Ring Road, Lajpat Nagar-IV, New Delhi-110 024 PAN -AAEFN 9135B
(Appellant)		(Respondent)

Appellant By	Ms. Rakhi Vimal, Sr. DR
Respondent by	Sh. Salil Aggarwal, CA
Date of Hearing	16.03.2021
Date of Pronouncement	16.03.2021

ORDER

PER SUDHANSHU SRIVASTAVA, JM:

This appeal is preferred by the Department against order dated 30.05.2017 passed by the Learned Commissioner of Income Tax (Appeals)-24, New Delhi {CIT(A)} for Assessment Year 2008-09 wherein the Ld. CIT(A) has deleted the penalty amounting to

Rs.63,86,300/- imposed u/s 271(1)(c) of the Income Tax Act, 1961 (hereinafter called 'the Act').

2.0 At the outset, the Ld. Authorized Representative (AR) submitted that the quantum proceedings in this case for the relevant Assessment Year was decided by Delhi Bench of the ITAT in favour of the assessee wherein the assessee's appeals in ITA Nos.3584, 3585, 3586, 3587 & 3588/Del/2014 were allowed and the Department's appeals in ITA Nos.3752 & 3753/Del/2014 were dismissed. The Ld. AR submitted that vide order dated 28.02.2018, the Tribunal had quashed the assessment order passed by the Assessing Officer and, therefore, the very foundation for levy of penalty u/s 271(1)(c) of the Act ceased to exist. The Ld. AR placed a copy of the order of the Tribunal on record. The Ld. AR further submitted that this order of the Tribunal was the subject matter of the appeal before the Hon'ble Delhi High Court and the Hon,ble Delhi High Court vide order dated 13.09.2017 dismissed the appeal of the Department. A copy of the order of the Hon'ble Delhi High Court was also placed on record.

3.0 Per contra, the Ld. Sr. Departmental Representative (DR) fairly accepted that the penalty did not survive in view of the order of the ITAT in the quantum proceedings.

4.0 Having heard both the parties, and after having gone through the order of the Tribunal in the quantum proceedings as aforementioned in ITA Nos. 3584, 3585, 3586, 3587 & 3588/Del/2014 for Assessment Years 2005-06 to Assessment Years 2009-10, we agree with the contention of the Ld. AR that the quantum proceedings have been quashed by the Tribunal and, therefore, the consequential penalty has no feet to stand on. We also note that the above mentioned order of the Tribunal in the quantum proceedings have been upheld by the Hon'ble Delhi High Court. Accordingly, we uphold the order of the Ld. CIT(A) in deleting the penalty.

5.0 In the final result, the appeal of the Department stands dismissed.

Above decision was announced on conclusion of Virtual hearing on 16th March, 2021.

Sd/-
(A.N.MISSHRA)
ACCOUNTANT MEMBER
Dated: 16/03/2021

Sd/-
(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

PK/ Ps

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI